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207, 45 N. Y. Supp. 753; *Ricketts v. C. & O. Ry. Co.*, 33 W. Va. 433, 10 S. E. 801, 7 L. R. A. 354, 25 Am. St. Rep. 901. In regard to unauthorized acts there is a difference of opinion. The decisions of the states on this point would seem to be in hopeless conflict; but the rule of the larger number holds corporations liable in punitive damages in all cases, whether the acts were authorized or unauthorized, ratified or disaffirmed, in which the servants themselves would be liable. *Memphis & C. Packet Co. v. Nagel*, 97 Ky. 9, 29 S. W. 743; *Louisville & N. Ry. Co. v. Whitman*, 79 Ala. 328; *Berg v. R. R. Co.*, 96 Minn. 513, 105 N. W. 191. See contra, *Kutner v. Fargo*, *supra*; *Craker v. Chicago, etc., Ry. Co.*, 36 Wis. 657, 17 Am. Rep. 504.

Since a corporation can only act through its servants, they would escape all liability in punitive damages, to allow them immunity from their servants' acts. Therefore, the better rule would seem to be that a corporation is liable in punitive damages for the acts of its servants in all cases in which the servants themselves are so liable.

CORPORATIONS—FRAUD OF PROMOTERS—RIGHTS OF SHAREHOLDERS.—A promoter organized a syndicate to subscribe to the stock of a corporation to be organized to take over certain properties, including that of a particular company. He concealed the fact from the other members of the syndicate that he was largely interested in the selling company, and that he intended to pay his subscription out of his interest in that company. A syndicate member, after tending the promoter the shares in the corporation formed by the latter, sought to rescind his contract with the promoter. *Held*, he cannot rescind. *Sims v. Edenborn* (C. C. A.), 206 Fed. 275. See NOTES, p. 141.

CORPORATIONS—ULTRA VIRES CONTRACTS—RIGHT TO ENFORCE.—The Central Ice Company was organized and incorporated for the purpose of holding stock in a number of subsidiary companies engaged in the manufacture and sale of ice. It owned all of the capital stock of the defendant and of several other subsidiary corporations, except one share issued to each of the directors to qualify them to act as officers of the corporations. Each of these subsidiary companies had been in the habit of lending its credit to the other companies at various times, although they had no charter authority so to do. The defendant lent its credit to one of these other subsidiary companies which was in violation of the statute prohibiting a corporation from making accommodation indorsements in the absence of express authority. This note was discounted by the plaintiff. After several renewals, the plaintiff sued the defendant on their indorsement. *Held*, the defendant is not liable. *Canal-Louisiana Bank & Trust Co. v. Savannah Ice Co.* (Ga.), 79 S. E. 45. See NOTES, p. 143.

CORPORATE STOCK—LIFE TENANT AND REMAINDERMAN—EXTRAORDINARY DIVIDEND.—Testator established a trust fund consisting of corporate stock, the income of which was to go to life tenants with remainder over. The corporation had a large surplus accumulated both before

and after testator's death in the proportion of .8975 to .1025. A dividend was declared after the death of the testator to the total amount of which, the total surplus earned after testator's death bore the proportion of .5132 to .4868. *Held* (1) the intrinsic value of the stock at testator's death must be compared with such intrinsic value at the time the dividend was declared; the comparison must be based on the corporate assets at the two dates, and that the market value of the stock at these two dates is admissible in evidence but is not conclusive thereon. (2) the actual value above par of the stock at the vesting of the trust, by reason of the accumulated surplus fund, belongs to the corpus, and to the extent that such value is impaired by the extraordinary dividend there must be apportionment in favor of the trust fund. Hence .5132 of the dividend per share is income and the remainder capital to be added to the trust fund. *In Re Stokes' Estate* (Pa.), 87 Atl. 971. See NOTES, p. 138.

DIVORCE—ALIMONY—AGREEMENT BETWEEN PARTIES—JURISDICTION.—Pending divorce proceedings, the husband and wife agreed that the husband should pay the wife an annuity for her life, transfer her absolute title to certain personalty and the use of certain realty for her life. This agreement was incorporated in the decree, thus saving the necessity of testimony as to alimony. Upon the subsequent remarriage of the wife, the husband applied for a modification of the decree. *Held*, it is not a decree for alimony and the court can not disturb it. *Emerson v. Emerson* (Md.), 87 Atl. 1033.

In divorce cases the Maryland equity courts are not exercising their general equitable jurisdiction, but are governed by the ecclesiastical law of England, in so far as the same has not been altered by statute. *J. G. v. H. G.*, 33 Md. 401, 3 Am. Rep. 183; *Fisher v. Fisher*, 93 Md. 303, 48 Atl. 833; *Emerson v. Emerson*, *supra*. The rule as to the nature of alimony has not been altered and the court cannot decree to the wife as alimony a gross sum, an absolute title to specific property, or a sale of the husband's estate for her use. 2 BISH. MAR., DIV. & SEP., § 835. The same rule would apply to the creation of an annuity. *Wallingsford v. Wallingsford* (Md.), 6 Har. & J. 485.

Consent cannot confer jurisdiction; and a divorce court limited to the determining of the marital status of the parties, granting alimony, and providing for the custody and maintenance of the children, cannot base its authority to settle the rights of the parties on an agreement between them. *Iglehart v. Armiger* (Md.), 1 Bland 519.

It is also well settled that there can be no material variation between the allegata and probata. A complainant cannot state one case in his pleadings and make a different one in his proofs. *Small v. Owings*, 1 Md. Ch. 363; *Keaton v. McGwier*, 24 Ga. 217; *Semrow v. Semrow*, 23 Minn. 214.

The agreement was in lieu of alimony; could be enforced irrespective of any contingencies; and therefore it seems that the Court, acting as a divorce court, exceeded its restricted jurisdiction in the enforcement of the agreement determining the property rights of the parties.